120-115

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 633.

THE UNITED STATES, APPELLANT,

vs.

GEORGE K. OTIS.

FILED OCTOBER 8, 1886.

No. 806.

GEORGE K. OTIS, APPELLANT,

vs.

THE UNITED STATES.

FILED NOVEMBER 13, 1886.

APPEALS FROM THE COURT OF CLAIMS.

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1 In the United States Court of Claims.

I.—*Petition.*—*Filed Jan.* 20, 1885.

GEORGE K. OTIS
vs.
THE UNITED STATES. } No. 14245.

Filed Jan'y 28th, 1884. J. R.

The petition of George K. Otis respectfully represents and shows to the court that he is a citizen of the United States, residing at Brooklyn, in the State of New York; that since on or about the 12th day of November, A. D. 1878, and for every succeeding year thereafter and until the month of June, A. D. 1881, inclusive, your petitioner was engaged in transporting mails and freight on what is known as mail route No. 6635, from the foot of Courtlandt street, in the city of New York, State of New York, across the Hudson River by ferry to Jersey City and return, for the United States, and at the special instance and request of the United States, the defendant above named, and likewise engaged in transporting mails and freight on what is known as mail route No. 6636, in said State of New York, from July 1st, 1877, to January 1st, 1881.

That the said United States is justly indebted to your petitioner therefor in the sum of twenty-four thousand and $\frac{48}{100}$ dollars, over and above all payments made thereon or set-off thereto.

2 That the bill of particulars hereto annexed, marked Schedule A, contains a true and correct statement, as your petitioner verily believes, of the amount due your petitioner, together with the dates when the respective sums therein set forth became due and payable.

Your petitioner further shows that the said claim has been at different times whilst said services were being rendered, and since the rendition thereof, as he has been informed and verily believes, duly presented to the proper authorities of the United States, whose duty it was by law to pay the same, for payment, but payment thereof has been and still is refused.

Your petitioner further shows that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that your petitioner is the owner thereof, and is justly entitled to the amount hereinbefore stated from the United States after allowing all just credits and offsets; that your petitioner has at all times borne trueal legiance to the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government, and the facts stated in said petition your petitioner believes to be true.

Your petitioner therefore prays judgment in his favor and against the United States for the sum of twenty-four thousand and $\frac{48}{100}$ dollars.

COLEMAN & COLEMAN,
Att'ys for Petitioner, 1419 *N. Y. Ave., Washington, D. C.*

3 STATE OF NEW YORK,
City and County of New York,
Southern District of New York, ss:

George K. Otis, being duly sworn, says that he has heard read the foregoing petition, and knows the contents thereof, and that the same is true

of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

GEORGE K. OTIS.

Subscribed and sworn to before me, January 25th, A. D. 1884.

[L. S.] TIMOTHY GRIFFITH,
U. S. Commissioner.

4 SCHEDULE A.

The United States to George K. Otis, Dr., for mail messenger service, route No. 6635.

To service and mileage in carrying mail from foot of Courtlandt street, New York City, to the Pennsylvania Railroad depot at Jersey City, State of New Jersey, and return:

From Nov. 12th, 1878, to March 31st, 1880	$5,636	18
" April 1st, 1880, to June 30th, 1880	1,479	89
" July 1st, 1880, to Sept. 30th, 1880	2,005	66
" Oct. 1st, 1880, to Dec. 31st, 1880	2,157	11
" Jan'y 1st, 1881, to March 31st, 1881	2,271	78
" April 1st, 1881, to June 30th, 1881	2,237	16
Total am't due	$15,787	78

To ferriage paid the Pennsylvania Railroad Company in carrying said mail on route 6635:

From Nov. 12th, 1878, to March 31st, 1880	$2,494	43
" April 1st, 1880, to June 30th, 1880	625	58
" July 1st, 1880, to Sept. 30th, 1880	867	05
" Oct. 1st, 1880, to Dec. 31st, 1880	926	88
" Jan'y 1st, 1881, to April 1st, 1881	1,021	87
" April 1st, 1881, to June 30th, 1881	1,003	34
Total amount due	$6,939	15

To service for extra mileage on mail route No. 6636:

From July 1st, 1877, to March 31st, 1880	$1,070	22
" March 31st, 1880, to Dec. 31st, 1880	203	38
Total am't due	$1,273	55

Total for carrying mail	$15,787	78
" " ferriage	6,939	15
" " extra mileage, &c	1,273	55
Total amount claimed	$24,000	48

5 II.—*General traverse.*—*Filed Feb'y* 16, 1884.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every

allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

6 IV.—*Findings of fact and conclusions of law.*

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The defendant advertised for carrying the mails in New York City as follows:

"*Mail station service, New York City.*

"POST-OFFICE DEPARTMENT,
"*Washington, March* 1, 1877.

"Proposals will be received at the contract office of this Department until 3 p. m. of April 7, 1877 (to be decided on or before the 10th of April following), for carrying the mails of the United States from July 1, 1877, to June 30, 1881, in the city of New York, as herein specified." (Route No. 6636, R., p. 12.)

Which, after designating the points to and from which the mails should be carried, provided as follows:

"It is to be understood and agreed that any increase in the service which may be rendered necessary by the removal to other localities of any of the above-named stations, or by any other cause, may be ordered by the Postmaster-General, and shall be paid for pro rata; and also that compensation pro rata shall be deducted in case of decrease in said service, caused by any such removal or by the discontinuance of any of said stations."

Under this advertisement the claimant made the following proposal:

"The undersigned, George K. Otis, whose post-office address is New York, county of N. Y., State of N. Y., proposes to carry the mails of the United States from July 1, 1877, to June 30, 1881, on route No. 6636, between New York City post-office and branch offices, State of New York, under the advertisement of the Postmaster-General dated March 1, 1877, 'with celerity, certainty, and security,' for the sum of fourteen thousand nine hundred ($14,900) dollars per annum; and, if this proposal is accepted, he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement.

"This proposal is made with full knowledge of the distance of the route, the weight of the mail to be carried, and all other particulars in refer-

ence to the route and service; and also after careful examination of the laws and instructions attached to advertisement of mail service.

"Dated April 5, 1877."

This proposal was accompanied by a bond as required by law, and was accepted by the defendant when a contract was entered into between the claimant and defendant.

7 So much of it is here set forth as may be necessary to present the points in the case:

"Route No. 6636. $14,900 per annum.

"35 WILLIAM ST., NEW YORK CITY, N. Y.

"This article of contract, made the 13th day of April, 1877, between the United States of America (acting in this behalf by D. M. Key, Postmaster-General) and George K. Otis, contractor, and Samuel L. M. Barlow and John O. Evans as sureties, witnesseth:

"That whereas the proposal of the said George K. Otis, under the advertisement of the Postmaster-General dated March first, 1877, for the performance of the mail station service at the city of New York, in the said advertisement described, at and for the sum of fourteen thousand nine hundred dollars per year, for and during the term beginning on the first day of July, 1877, and ending June thirtieth, 1881, has been accepted by the Postmaster-General:

"Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America to carry the mail of the United States, using such proper means therefor, and particularly the wagons hereinafter described, as may be necessary to transport the whole of said mail, whatever may be its size or weight, during the term of this contract.

* * * * * * *

"And any new or additional mail station service which may become necessary and be required by the Postmaster-General during the term of this contract.

* * * * * * *

"It is further understood and agreed that any increase in the service which may be rendered necessary by the removal to other localities of any of the above-named stations, or by any other cause, may be ordered by the Postmaster-General, and shall be paid for pro rata; and also that compensation pro rata shall be deducted in case of decrease in said service, caused by any such removal, or by the discontinuance of any of said stations."

The claimant while engaged in carrying the mails under this contract, and also under the contract for mail-messenger service, set forth in Finding II, was directed by the postmaster in New York City to perform the following trips: Eighteen round trips per week from Station E, No. 465 Eighth avenue, to the Hudson River Railroad depot, Thirtieth street and Tenth avenue; six trips per week from post-office to Harlem Railroad depot, Forty-second street and Fourth avenue, 6.30 a. m. train.

These trips were duly performed. The service between Station E and the Hudson River Railroad depot amounted to 2,784 miles; the allow-

ance therefor under the station-service contract in this finding set forth would be $657.58. The service between the post-office and the Harlem Railroad depot amounted to 2,607.82 miles; the allowance therefor under the station-service contract in this finding set forth would be $615.97.

The claimant duly rendered accounts for this service, verified under oath, each account having the following title, omitting the dates:

"The Post-Office Department to George K. Otis, contractor.

"For extra service in conveying the United States mails on route No. 6636, New York City."

Appended to each account was the following certificate:

"I do hereby certify that the service as stated in the foregoing account was necessary and was duly performed by George K. Otis in pursuance of orders issued from this office.

"T. L. JAMES, *P. M.*,
"Per H. G. PEARSON, *Ass't P. M.*"

These certificates were dated at the New York post-office.

8 II.

The defendant also advertised for carrying mails in New York City, on route No. 6635, as follows:

"*Mail-messenger service, New York City.*

"POST-OFFICE DEPARTMENT,
"*Washington, March* 1, 1877.

"Route No. 6635.

"Proposals will be received at the contract office of this Department until 3 p. m. of April 7, 1877 (to be decided on or before April 10th following), for carrying the mails of the United States between the post-office in the city of New York and the railroad stations and steamboat landings, and between the several stations where transfer service is required, from July 1, 1877, to June 30, 1881.

* * * * * * *

"The following schedule shows the mail messenger and transfer service now required at New York; but the accepted bidder under this advertisement will be required to perform, without additional compensation, any and all new or additional service that may become necessary during the term of the contract, whether to and between depots and landings now established or those which may be hereafter established. Bids must be made with this distinct understanding, and must name the amount per annum for the whole service, and not by the trip. There will be no diminution of compensation on account of the discontinuance of such portions of

the service as may become unnecessary during the contract term; but deductions will be made for neglect of duty.

* * * * * * *

"Proposals should be sealed, superscribed 'Proposals for mail-messenger service, New York, N. Y.,' and addressed to the Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.

"*Schedule of service now required.*

Railroad.	Location of depot.	Distance from post-office to depot.	Number of trips per week from office to depot.	Number of trips per week from depot to office.
		Miles.		
Pennsylvania	Jersey City	1.45	54	27
Pennsylvania	Foot of Cortlandt street	.45	50	50
Erie Railway	Jersey City	1.63	43	57
Northern Railroad of New Jersey	do	1.63	12	12
New Jersey and New York	do	1.63	18	24
Mount Clair and Greenwood Lake	do	1.63	6	6
New Jersey Midland	do	1.45	6	6
Central Railroad of New Jersey	do	1.63	49	37
Delaware, Lackawanna and Western	Hoboken	2.20	36	42
New York and New Haven	Grand Central depot	3.23	50	44
New York and Harlem	do	3.23	18	18
New York Central and Hudson River	do	3.23	45	71
New Jersey Southern	Pier 8, North River	.65	12	12
Staten Island	Foot of Whitehall street	.90	18	18
Fall River boat-landing	Pier 28, North River	.58	6	7
Long Island	Long Island City	3.85	36	36

"TRANSFERS.

"Grand Central depot to Erie Railway, 3.35 miles, six times a week.

"Grand Central depot to Pennsylvania Railroad, 3.55 miles, twenty-four times a week.

"Grand Central depot (Boston line) to Grand Central depot (New York Central and Hudson River line), .35 of a mile, often as required.

"The transfer service to include the conveyance of all cases of post-office supples for transit through the city."

9 In answer to this advertisement the claimant submitted the following proposal:

"The undersigned, George K. Otis, whose post-office address is New York, county of New York, State of New York, proposes to carry the mails of the United States from July 1, 1877, to June 30, 1881, on mail-messenger route No. 6635, between the post-office at New York City and the railroad stations and steamship landings in said city, including transfers between stations, and under the advertisement of the Postmaster-General, dated March 1, 1877, for the annual sum of fifty-seven thousand nine hundred ($57,900) dollars per annum; and, if this proposal is accepted, he will enter into contract, with sureties to be approved by the Postmaster-General, within the time prescribed in said advertisement.

"This proposal is made after due inquiry into and with full knowledge of all particulars in reference to the service, and also after careful examnation of the conditions attached to the advertisement, and with the"—

This proposal was accompanied by a bond, as was required by law, and was accepted, and the parties entered into the following contract:

"UNITED STATES OF AMERICA.

"*Mail-messenger service in the city of New York from July first*, 1877, *to June thirtieth*, 1881.

"35 WILLIAM STREET, NEW YORK CITY, N. Y.

"Route No. 6635. $57,900 per annum.

"This article of contract, made the 13th day of April, 1877, between the United States of America (acting in this behalf by D. M. Key, Postmaster-General) and George K. Otis, contractor, and Samuel L. M. Barlow and John O. Evans, as sureties, witnesseth:

"That whereas the proposal of the said George K. Otis, under the advertisement of the Postmaster-General dated March first, 1877, for the performance of the mail-messenger service at the city of New York, in the said advertisement described, at and for the sum of fifty-seven thousand nine hundred dollars per year, for and during the term beginning on the first day of July, 1877, and ending June thirtieth, 1881, has been accepted by the Postmaster-General:

"Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America to carry the mails of the United States, using such proper means therefor, and particularly the wagons hereinafter described, as may be necessary to transport the whole of said mail, whatever may be its size or weight, during the term of this contract, as follows, to wit:

"From the New York City post-office to the Pennsylvania Railroad depot (Jersey City) fifty-four (54) times per week; returning from said depot to post-office, twenty-seven (27) times per week.

"From the New York City post-office to the Pennsylvania Railroad depot (foot of Cortlandt street) and back fifty (50) times per week.

"From the New York City post-office to the Erie Railway depot forty-three (43) times per week; returning from said depot to post-office fifty-seven (57) times per week.

"From the New York City post-office to the depot of the Northern Railroad of New Jersey and back twelve (12) times per week.

"From the New York City post-office to the New Jersey and New York Railroad depot eighteen (18) times per week; returning from said depot to post-office twenty-four (24) times per week.

"From the New York City post-office to the Mont Clair and Greenwood Lake Railroad depot and back six (6) times per week.

"From the New York City post-office to the New Jersey Midland Railroad depot and back six (6) times per week.

"From the New York City post-office to the depot of the Central Railroad of New Jersey forty-nine (49) times per week; returning from said depot to post-office thirty-seven (37) times per week.

"From the New York City post-office to the Delaware, Lackawanna and Western depot thirty-six (36) times per week; returning from said depot to post-office forty-two (42) times per week.

"From the New York City post-office to the New York and New Haven Railroad depot fifty (50) times per week; returning from said depot to post-office forty-four (44) times per week.

"From the New York City post-office to the New York and Harlem Railroad depot and back eighteen (18) times per week.

"From the New York City post-office to the New York Central and Hudson River Railroad depot forty-five (45) times per week; returning from said depot to post-office seventy-one (71) times per week.

"From the New York City post-office to the New Jersey Southern Railroad depot and back twelve (12) times per week.

"From the New York City post-office to the Staten Island Railroad depot and back eighteen (18) times per week.

"From the New York City post-office to the Fall River boat-landing six (6) times per week; returning from said landing to post-office seven (7) times per week.

"From the New York City post-office to the Long Island Railroad depot and back thirty-six (36) times per week.

"TRANSFERS.

"Grand Central depot to Erie Railway six times a week.

"Grand Central depot to Pennsylvania Railroad twenty-four times a week.

"Grand Central depot (Boston line) to Grand Central depot (New York Central and Hudson River line) as often as required.

"The transfer service to include the conveyance of all cases of post-office supplies arriving for transit through the city, each and every transfer to be made as often as may be required by the Postmaster-General, the transfer service to include the conveyance of all cases of post-office supplies arriving for transit through the city; and will do and perform all other mail-messenger and transfer service now being performed in the said city of New York, and any and all new or additional mail-messenger or transfer service in the said city, whether to and between depots and landings now established and those which may hereafter be established, which may become necessary and be required by the Postmaster-General during the time of this contract, without additional compensation, said service to be performed at such hours of arrival and departure at and from the above-designated points or places, or those which may be hereafter established, as the postmaster at New York City may order and direct.

* * * * * * *

"It is hereby stipulated and agreed that the Postmaster-General may, if it be required by the public interest, order new or additional service which may become necessary to be performed, which shall be performed without additional compensation; also that he may discontinue or curtail the service, in whole or in part, if in his judgment the public interest shall so require, he allowing as full indemnity to the contractor one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the amount of service retained and continued."

III.

While the claimant was engaged in the performance of this contract the defendant, on the 12th day of November, 1878, directed him to transport mails, which theretofore had been transferred, as required by the contract, "from the New York City post-office to the Pennsylvania Railroad depot (foot of Cortlandt street) and back fifty times per week," across the Hudson River to the Pennsylvania Railroad depot at Jersey City, in the State of New Jersey.

This service the claimant performed from November 12, 1878, to July 1, 1881.

The pro rata, which is also the reasonable value of the service, is the sum of $15,787.78.

IV.

When the contract between the claimant and defendant was executed this extra service was being performed by the Pennsylvania Railroad Company, under contract with the United States.

V.

The claimant duly filed his account for such extra service in the Post-Office Department, where it was pending until the filing of his petition in this court.

11 CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decides as conclusions of law:

1. The claimant is entitled to recover for the extra service between Station E and the Hudson River Railroad depot the sum of $657.58.

2. The claimant is not entitled to recover for the extra service between the post-office and the Harlem Railroad depot.

3. The claimant is entitled to recover for the extra service between the foot of Cortlandt street and Jersey City the sum of $15,787.78.

4. Upon the whole case the claimant is entitled to a judgment in the sum of $16,445.36.

IV.—*Opinion of the court.*

DAVIS, J., delivered the opinion of the court:

In the spring of 1877 the claimant contracted to transport the mails between the United States post-office in New York City and various railroad stations and steamboat landings, and also to transfer certain through mails from one railroad station to another. The route covered by this agreement was known as No. 6635. The contract ran for four years from July 1, 1877, and the service was designated "Mail-messenger service in the city of New York." Among other things the claimant agreed in this contract to carry the mails from the city post-office "to the Pennsylvania Railroad depot (foot of Cortlandt street) and back fifty times per week"; and that for any new or additional service in "said city" which he might be ordered to perform he should not receive additional compensation. Another

clause in the contract also prohibits the allowance of additional compensation for additional service, but omits the limiting words "in said city." It is upon the interpretation of these two apparently inconsistent clauses that this branch of the case turns, for the claimant alleges that after entering upon the performance of the contract he was ordered to extend some of his Cortlandt street trips to Jersey City; this service he contends was extra, and as it was not performed in the city of New York, he believes himself entitled to compensation therefor.

The claimant also contracted in the spring of 1877 to carry the mails between the city post-office and various subpost-offices, or post-office stations in New York. The route is known as No. 6636, and the caption of the contract shows it to be for "Mail-station service in the city of New York." The term was the same as that of the messenger contract, to wit, four years from July 1, 1877.

While the claimant was performing this contract he was ordered to transport the mail eighteen round trips per week between Station E and the Hudson River Railroad depot, and also to make six trips each week from the city post-office to the Harlem Railroad depot. Neither of these services was named in the station contract, but that instrument provided that any increase in mail-station service should be paid for pro rata, and claimant, holding these trips to be extra service under this contract, asks compensation therefor, to which, it is not disputed, he is entitled if the service was rendered under the station contract, and not, as the Government contends, under the messenger contract.

12 The claimant puts in evidence certificates of the postmaster in New York City, which are annexed to the accounts for the extra trips, presented after they had been performed. These certificates state that the service as shown in the accounts was necessary, and duly performed under orders issued from the post-office, and are objected to by the defendant so far as they may be used to prove under which contract the service was performed, or that orders had been theretofore issued from the post-office directing the claimant to perform it.

As to the eighteen trips from Station E, the certificate, if admitted, would be merely cumulative, for the trips were in fact made, and on its face the service is station and not messenger service; the mails were collected at a post-office station, and the fact that they were delivered at a railroad depot and not at another post-office station, or at the city post-office, is not of consequence, as we find in this contract provision for the transfer of mails to and from stations of the elevated railroad; and, further, the general purpose of the messenger contract is not directed to such purely local service as this.

The trips between the city post-office and the Harlem Railroad stand upon a very different foundation. Upon their face they clearly fall within the messenger contract, connecting, as they do, the central office with a railroad depot, and nothing except the postmaster's certificate appears in the record tending to show (even if that be of consequence) that the mails carried were in fact intended for a substation. It is conceded by the defendants that this certificate is competent to prove the necessity and due performance of the service, but that it cannot go further; this point is well taken. To admit the document as proof of the particular contract under which the work was done would involve an acceptance of the postmaster's

conclusion of law, based upon his interpretation of the two contracts in the light of facts not before the court, and which is contrary to the evidence here produced.

Returning now to the claim for increase of trips between Cortlandt street and Jersey City, the claimant urges that this service, not being within the geographical limits of New York City, does not fall within clauses prohibiting extra compensation for new or additional service, and further, that the service was not new or additional within the true meaning of the agreement. Both these propositions the counsel for the Government deny, contending that as the claimant, in addition to the Cortlandt-street trips, agreed specifically to carry mails to Jersey City fifty-four times each week, the extra trips to that point fall within the prohibitory clauses. To sustain this contention, which has been fully and ably presented, it must be shown that the second clause, broadly prohibiting extra compensation for new or additional service, limits the first clause, which confines the prohibition to additional service within the city limits. The main object of the contract was to secure the safe and speedy transfer of mails between the city post-office and the railroad and steamboat lines. It was intended to provide a connection between the principal city office and the railroad and steamboat system, and between different links of this system. Such being the purpose of the instrument, and the Pennsylvania Company having its terminus to New York, it would naturally be inferred that a delivery of mails, intended for that company, at its Cortlandt-street depot,

13 would be sufficient, and any exceptions to this course would be distinctly set forth and limited to those specifically named. That is, that a contract for the transfer of mails in a city would not call for their delivery in another city over a portion of the line of the very company into whose custody they were ultimately to be given, unless specific agreement were made to that effect. Among the routes specified as let to the claimant were several requiring delivery in cities outside of New York, as the fifty-four trips to Jersey City already mentioned and others to Hoboken and to Long Island City. The trips were named in the contract, their number and length were set forth in the advertisement in detail, and if we stop here the claimant can be held only to the performance of the exact service specified.

There appears, however, in the agreement this clause: "And [the contractor] will do and perform any other mail messenger and transfer service now being performed in the said city of New York and any and all new or additional mail messenger or transfer service in the said city, whether to and between depots and landings now established and those which may hereafter be established, which may become necessary and be required by the Postmaster-General during the time of this contract, without additional compensation."

This distinctly confines the extra service to the city limits; but further on appears the provision "that the Postmaster-General may, if it be required by the public interest, order new or additional service, which may become necessary to be performed, which shall be performed without additional compensation."

As we have seen, the contract, the proposal, and the advertisement aimed generally at mail transfer within the city limits; further, it appears that the Pennsylvania Railroad at the date of the contract was carrying mails

across its ferry from Cortlandt street to Jersey City; it is therefore fair to assume that in the minds of the parties the Jersey City trips named in the contract were regarded as exceptional and not subject to the same rules as to extra compensation for additional trips as the transfer service within the city limits. It is a natural inference that if the Government desired this contractor under a city-transfer contract to take mails to another city over the lines of another contractor for delivery there to this other contractor specific provision therefor would have been made.

The "new" service contemplated was service similar in its nature to that embraced in the general intent of the contract, such as that becoming necessary through the establishment of a new railroad station or steamboat landing in New York, while "additional" service was to be an increase of the service which the contract as a whole contemplated, not an increase of an exceptional service which more properly might form part of another instrument. Certainly the term "new or additional service" was not intended to cover the transfer from one contractor to another of an existing service previously performed by the one for pay, and which, under the defendants' interpretation, the other must render gratuitously. This would be a change of service, not service new or additional to that prescribed in the agreement.

In the construction of this contract the Government can claim no other or more favorable rule than a private individual, and as it is well known that instruments of this character are prepared by the Post-Office Department, leaving to the contractor no choice as to form or phraseology,
14 that construction must be adopted which is more to the advantage of the claimant. Authority for this is found in Noonan vs. Bradley (9 Wallace, 407), where the court said: "If there were any doubt as to the construction which should be given to the agreement of the intestate, that construction should be adopted which would be more to the advantage of the defendant upon the general ground that a party who takes an agreement prepared by another, and upon its faith incurs obligations or parts with his property, should have a construction given to the instrument favorable to him, and on the further ground that when an instrument is susceptible of two constructions—the one working injustice and the other consistent with the right of the case—that one should be favored which standeth with the right."

In construing the conflicting clauses of this agreement we have followed the rule laid down in Gibbons vs. The United States (15 C. Cls., 174), where the court, speaking by Judge Nott, said: "When it becomes the duty of a court to ascertain the true construction which should be given to a disputed article of a contract, there are three things which ordinarily should be the subject of consideration: 1st, the circumstances known to both parties which preceded and attended the making of the contract, in the light of which it should be interpreted; 2d, the general purpose of the contract and those specific provisions which, directly or indirectly, bear upon and affect the provision which is the subject of controversy; 3d, the language and effect of the clause or article to which a construction must be applied."

The circumstances surrounding the contract point generally to transfer within the city. The purpose of the parties was to connect the great transportation lines with each other and with the city post-office, and one of

these lines was the Pennsylvania Railroad, with its terminus in New York. The contingency contemplated by the contractor under which new or additional service could be required was the establishment within the city of new railroad depots or an increase in bulk of mails carried on the city routes. It could not have been assumed by the contractor or his sureties that under the guise of new or additional service transportation previously performed by the railroad company for pay was to be performed by him without pay over that company's line. The question of the amount of compensation is disputed, the Government contending for a pro rata allowance based upon the total consideration named in the contract, while the claimant asks a quantum meruit and the amount actually disbursed for ferriage. As we find that in either aspect of the case the allowance would be the same in amount it is not necessary to consider this question.

Judgment will be entered in favor of the claimant in the sum of $16,445.36.

15 V.—*Final judgment.*

At a Court of Claims, held in the city of Washington on the 11th day of May, A. D. 1885, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said George K. Otis do have and recover of and from the United States the sum of sixteen thousand four hundred forty-five $\frac{36}{100}$ dollars ($16,445.36).

16 VI.—*Application of defendants for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 11th day of May, 1885, in favor of claimant, the defendants, by their Attorney-General, on the 23rd day of June, 1885, make application for, and give notice of an appeal to, the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Filed June 23, 1885.

Allowed.

WILLIAM A. RICHARDSON,
Chief-Justice.

17 VII.—*Application of claimant for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 11th day of May, 1885, in favor of claimant, the said claimant, on the 18th day of July, 1885, makes application for, and gives notice of an appeal to, the Supreme Court of the United States.

J. COLEMAN,
Att'y for Claimant.

Filed July 18, 1885.

Allowed, July 18, 1885.

WILLIAM A. RICHARDSON,
Chief-Justice.

18 In the Court of Claims.

GEORGE K. OTIS
vs.
THE UNITED STATES. } No. 14245.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusions of law thereon, of the opinion of the court, of the final judgment, of the application of defendants for, and the allowance of, appeal to the Supreme Court of the United States, and of the application of claimant for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 17th day of September, A. D. 1885.

ARCHIBALD HOPKINS,
Ch. Clerk, Court of Claims.

(Indorsement on cover:) Court of Claims. No. 633. The United States, appellant, vs. George K. Otis. Filed October 3, 1885. And No. 806. George K. Otis, appellant, vs. The United States. Filed November 13, 1885.

120-115

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, APPELLANT,
v.
GEORGE K. OTIS. } No. 633.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE UNITED STATES, APPELLANT,
v.
GEORGE K. OTIS. } No. 633.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

Statement.

Otis brought suit against the United States to recover $24,048, claimed to be due him for service and mileage and ferriage in carrying mails on two post-office routes, one in New York City, and one between New York City and Jersey City.

Claimant, under advertisement from Post-Office Department, made proposals, which were accepted, and entered into two contracts (1) "for the performance of the mail station service at the city of New York, for and during the term beginning on the 1st day of July, 1877,

and ending June 30, 1881," on route numbered 6636; and (2) "for carrying the mails of the United States between the post-office in the city of New York, and the railroad stations and steamboat landings, and between the several stations where transfer service is required, from July 1, 1877, to June 30, 1881," on route numbered 6635. (Rec., pp. 3–8.)

Service on route No. 6636 was known and designated as "mail station service at the city of New York." Service on route No. 6635 was known and designated as "mail messenger service at the city of New York." (Rec., pp. 4, 7.)

Claimant performed service on route No. 6636, which was not specifically designated in the contract, under direction of the postmaster in New York, as follows, "eighteen round trips per week from Station E, No. 465 Eighth avenue, to the Hudson River Railroad depot, Thirteenth street and Tenth avenue, amounting to 2,784 miles. Allowance therefor under the station-service contract would be $657.58. (Rec., pp. 4, 5.)

Under contract on route No. 6635, claimant performed service not included in the schedule of service, by direction of the defendant, in transporting mails, which theretofore had been transferred, as required by the contract, "from the New York City post-office to the Pennsylvania Railroad depot (foot of Cortlandt street) and back fifty times per week," across the Hudson River to the Pennsylvania Railroad depot at Jersey City, in the State of New Jersey. The court found that the pro rata, which is also the reasonable value of the service, was $15,787.78. (Rec., p. 9.)

When the contract between the claimant and the defendant was executed this extra service was by the Pennsylvania Railroad Company, under contract with the United States. (Rec., p. 9.)

The proposals for carrying the mails on route No. 6636, were "to carry the mails of the United States from July 1, 1877, to June 30, 1881, between New York City post-office and branch offices, &c." (Rec., p. 3.) The contract contained, among other provisions, the following:

> That whereas the proposal of the said George K. Otis, * * * for the performance of the mail-station service at the city of New York * * * has been acccepted.
>
> * * * * * *
>
> Any new or additional mail-station service which may become necessary and be required by the Postmaster-General during the term of this contract.
>
> * * * * * *
>
> It is further understood and agreed that any increase in the service which may be rendered necessary by the removal to other localities of any of the above-named stations or by any other cause may be ordered by the Postmaster-General and shall be paid for pro rata, and also that compensation pro rata shall be deducted in case of decrease in said service caused by any such removal and by the discontinuance of any of said stations. (Rec., p 4.)

The contract for service on route No. 6635, contained, among others, the following provisions:

> The transfer service to include the conveyance of all cases of post-office supplies arriving for transit

through the city, each and every transfer to be made as often as may be required by the Postmaster-General, the transfer service to include the conveyance of all cases of post-office supplies arriving for transit through the city; and will do and perform all other mail-messenger and transfer service now being performed in the said city of New York, and any and all new or additional mail-messenger or transfer service in the said city, whether to and between depots and landings now established and those which may hereafter be established, which may become necessary and be required by the Postmaster-General during the time of this contract, without additional compensation, said service to be performed at such hours of arrival and departure at and from the above designated points or places, or those which may be hereafter established, as the postmaster at New York City may order and direct.

* * * * *

It is hereby stipulated and agreed that the Postmaster-General may, if it be required by the public interest, order new or additional services which may become necessary to be performed, which shall be performed without additional compensation; also that he may discontinue or curtail the service, in whole or in part, if, in his judgment, the public interest shall so require, he allowing as full indemnity to the contractor one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the amount of service retained and continued. (Rec., p. 8.)

The advertisement preceding this latter contract invited proposals for carrying the mails of the United States between the post-office in the city of New York and the

railroad stations and steamboat landings, and between the several stations where transfer service is required, &c. Attached to it was a schedule showing mail messenger and transfer service now required at New York. In that schedule were embraced sixteen routes—nine of these had termini outside of the city of New York—at Jersey City, Hoboken, and Long Island City. These were, in exact words, included in the contract. (Rec., pp. 5–7.)

The court below gave judgment for the two amounts above named—on route No. 6636, for extra service, $657.58; on route No. 6635, for extra service between the foot of Cortlandt street and Jersey City, $15,787.78.

From this judgment the United States appeals.

The two questions presented here are whether the claimant was entitled under these contracts to recover for the extra service. If he was, the amounts in the findings and the judgment are correct.

Assignment of errors.

I. The court erred in determining that the service on route No. 6636, from station E to the railroad depot, was extra service, for which claimant was entitled to recover pro rata, and in giving judgment therefor.

II. The court erred in determining that the service on route No. 6635, from the foot of Cortlandt street to the Pennsylvania depot, was extra service, for which claimant was entitled to recover compensation, and in giving judgment therefor.

BRIEF OF POINTS.

I.

The defendant claims that the service required, "eighteen round trips per week from station E, No. 465 Eighth avenue, to the Hudson River Railroad depot, Thirtieth street and Tenth avenue," was mail-messenger service, and came within the provisions of the contract for service on route No. 6635. The Court of Claims treated it as station service under the contract for service on route No. 6636. If it were the latter the claimant would be entitled to recover what was given him by the judgment below.

The mail-station service appears to be considered as service connected with the business between the general post-office and the branches or stations established for the convenience of the residents of a large city. These stations are apt to be changed, and new stations are established, to meet the wants of the people. The contract recognized this condition, and therefore provided for compensation pro rata.

But the service required by the Postmaster-General, although from a station, was independent of the general office and to a railroad depot. The proposals for carrying the mails on route No. 6636, were "to carry * * * between New York City post-office and branch offices." The contract recites "that whereas the proposal for the performance of the mail-station service at the city of New York has been accepted." * * *

The authority for the designation of branch post-offices, which are commonly called stations, is in section 3871, Revised Statutes:

> The Postmaster-General, when the public convenience requires it, may establish within any post-office delivery one or more branch offices for the receipt and delivery of mail matter and the sale of stamps and envelopes; and he shall prescribe the rules and regulations for the government thereof.

Section 355, Postal Laws and Regulations (1879), provides:

> The mails from the post-office to the stations, and return, must be conveyed with the greatest possible dispatch and by the most expeditious routes.

The mail messenger service is of an entirely different character, and is well defined in the postal regulations:

> *Mail messenger service.*—In connection with railroad and steamboat routes, mail messengers are designated to carry the mails to and from post-offices not at the termini of routes when such post-offices are more than eighty rods (one-quarter of a mile) from the steamboat landing or railroad station. (Sec. 627, Postal Laws and Regulations (1879), p. 147.)

This section was amended as follows:

> SEC. 627 (*Mail messenger service*).—In connection with railroad and steamboat routes, and between post-offices and branch post-offices, mail messengers are designated to carry the mails to and from post-offices and branch post-offices, and from post-offices not at the termini of routes when such post-offices are more than eighty rods (one-quarter of a mile) from the steamboat landing or railroad station. (United States Official Guide, January 1885, p. 722.)

These citations show this distinction: Mail station service is service between the post-office and branch offices or stations: mail messenger service is service in connection with railroad and steamboat routes. The service from station E to the Hudson River Railroad depot, being in connection with a railroad route, is messenger service, and governed by the terms of the mail messenger contract. Under this contract, as we will see hereafter, the contractor was not entitled to further compensation. It will be remembered that the contractor, Otis, had both contracts, and that both were executed on the same day.

II.

The second claim of the contractor is for extra service in carrying mails from the foot of Cortlandt street to the Pennsylvania Railroad depot at Jersey City. It is admitted that this service was not included in the designations of routes in the contract. This contract (the contract on route No. 6635) nowhere contains any provision for compensation for extra, additional, or new service. On the contrary, the contractor agreed to perform all other mail-messenger and transfer service now being performed in the said city of New York, and any and all new or additional mail-messenger or transfer service in the said city, whether to and between depots and landings now established and those which may hereafter be established, which may become necessary and be required by the Postmaster-General during the time of this contract, without additional compensation. And it was further stipulated and agreed that the Postmaster-General may order new or additional service which may become neces-

sary to be performed, which shall be performed without additional compensation.

There is no uncertainty in the terms of this contract. No necessity exists to go beyond the language of these quoted clauses. The fact that the contract was prepared and furnished by the defendant does not affect the matter of dispute. The advertisement by the United States and the proposal by the contractor preceded the contract and are recited in it. These were the mutual acts of the parties; and the contract can, in no correct uses of phrases, be brought within the doctrine of a contract prepared by another and under which obligations were incurred or property parted with, as spoken of in *Noonan* v. *Bradley* (9 Wall, 407). No question of *quantum meruit*, or equitable right to reasonable allowance by reason of a departure from the terms of the contract by mutual consent, as mentioned in *Roberts's Case* (92 U. S. 41), need be considered here. The defendant relies upon the express covenant to perform all other mail-messenger service without additional compensation.

The claimant insists that this service does not come within these clauses, because—

(1) The "other" service and the "new or additional service" he might be called on to perform must be within the limits of New York City.

(2) This was not "new or additional" service.

By reference to the advertisement, proposals, and contract (Rec., pp. 5–8) it will be seen that the prepositions *in* and *at* are used, and perhaps appropriately, interchangeably. Each signifies, in its connection, nearness in place. The advertisement reads, "carrying mails between the

post-office *in* the city of New York and the railroad stations and steamboat landings." And again: "The following schedule shows the mail messenger and transfer service now required *at* New York. The schedule showed sixteen routes, nine of which had termini outside the city. The proposal was for carrying mails between the post-office *at* New York City and the railroad stations and steamship landings *in* said city, under the advertisement of the Postmaster-General; and further recites it was made after due inquiry into and with full knowledge of all particulars in reference to the service, and also after careful examination of the conditions attached to the advertisement. The contract recites the advertisement and proposal for the performance of the mail-messenger service *at* the city of New York.

And these remarks apply with greater and unmistakable direction, in their application, to the clauses under which the defendant insists the claimant was compelled to perform this service without compensation.

The advertisement, in connection with the schedule referred to, recites that the accepted bidder will be required to perform, without additional compensation, any and all new or additional service that may become necessary during the term of the contract, whether to and between depots and landings now established or those which may be hereafter established. The contract, always treading in the foot-marks of the advertisement and proposals, contains the covenant that the contractor will perform *all other mail messenger and transfer service now being performed in the said city of New York*, and any new or additional mail messenger or transfer service in the said city,

whether to and between depots and landings now established and those which may hereafter be established, which may become necessary, and be required by the Postmaster-General during the time of this contract, without additional compensation, said service to be performed at such hours of arrival and departure at and from the above designated points or places, or those which may hereafter be established, as the postmaster *at* New York City may order and direct.

It matters not, then, whether the extra service was "other," or "new," or "additional;" it is fully covered by the stipulations of the agreement. It is useless elaboration to discuss whether it was *additional* to the designated service "from the New York city post-office to the Pennsylvania Railroad depot (Jersey City) fifty-four (54) times per week," or whether it was *other* service, or *new* service, as distinguished from that specified. It is sufficient to know it was mail-messenger service to a depot then established, and that it was required by the Postmaster-General. It was then, by reference to the contemporaneous acts of the contracting parties, service in the city of New York.

It is respectfully submitted the contractor was not entitled to recover for either of these claims.

ROBERT A. HOWARD,
Assistant Attorney-General.

120-115

In Supreme Court of the United States.

THE UNITED STATES,

.. Appellant,

vs.

GEORGE K. OTIS.

BRIEF OF APPELLEE.

J. COLEMAN,
Attorney for Appellee.

In Supreme Court of the United States.

THE UNITED STATES,
APPELLANT,
vs.
GEORGE K. OTIS.

STATEMENT.

This is an appeal from the judgment of the Court of Claims.

The claimant filed his petition in the Court below alleging that there was due to him from the United States the sum of $24,048.00.

The Court rendered judgment in his favor for $16,445.36.

From this judgment the appellant appeals to this Court.

The Court below found as facts, that in the month of March, 1877, the appellant advertised for carrying the mails in New York city on what was known as route 6636, viz., from the New York city post-office in New York city to different stations in said city, for the sum of $14,000 per annum.

That the claimant made a proposal under said advertisement which was accepted by the appellant, and thereupon they duly entered into a contract according to the terms of the advertisement proposal, and acceptance.

That the claimant, while engaged in the performance of

this contract, was directed by the appellant to perform certain extra service not required by the contract between Station E and the Hudson river.

That the value of this service was $657.58.

The advertisement, proposals, contract, &c., are fully set out in Finding I. (*R.*, *pp.* 3, 4.)

The Court further found that—

On the 1st of March, A. D. 1877, the appellant advertised "*for mail messenger service in New York city, route No.* 6635."

The advertisement was for "proposals for carrying the mails of the United States between the post-office *in the city of New York and the railroad stations and steamboat landings* from July 1st, 1877, to June 30th, 1881.

All proposals were required to be superscribed, "*Proposals for mail messenger service in New York, N. Y.*"

The claimant proposed to the appellant under this advertisement to carry the mails from July 1st, 1877, to June 30th, 1881, "*between the post-office at New York city and the railroad stations and steamboat landings* IN SAID CITY for $57,900 per annum.

This proposal was duly accepted, the bond accompanying the same approved, and on the 22d day of May, 1877, the claimant and appellant entered into a contract which, after reciting the acceptance of the proposal made by the claimant, provided, among other things, as follows:

"To carry the mails of the United States * * * from the New York city post-office to the Pennsylvania Railroad depot (foot of Cortland street) and back fifty times per week. * * *

"And will do and perform all other mail messenger and transfer service now being performed *in the said city of New York*, and any and all *new or additional* mail mes-

senger or transfer service *in the said city* 'during the term of the contract.'"

The contract further contained a stipulation that the Postmaster-General might, if the public interest required it, order "*new or additional service* which may become necessary to be performed, which shall be performed *without additional compensation;* also that he may discontinue or curtail the service in whole or in part if in his judgment the public interest shall so require."

The claimant entered upon the performance of this contract immediately after its execution. And while so engaged, and on the 12th of November, 1878, *he was ordered and directed by the Postmaster at New York city thereafter to transport and deliver the mail, which theretofore had been delivered by him, as required by the contract, at the foot of Cortland street, in New York city, across the Hudson river to the depot of the Pennsylvania Railroad Company in Jersey City, in the State of New Jersey.*

This service the claimant performed until the month of June, 1881.

That the *pro rata* value of this service was $15,787.78.

Findings II and III, R., pp. 5–9.

The Court further found finding:

"IV.

"That when the contract between the claimant and defendant was executed this extra service was being performed by the Pennsylvania Railroad Company under contract with the United States.

"V.

"The claimant duly filed his account for such extra ser-

vice in the Post-office Department, where it was pending until the filing of his petition in this Court." (R., p. 9.)

Points.

I.

The Court below in its first finding found that the claimant had been required by the appellant to carry the mails on route No. 6636, between Station E and the Hudson River Railroad depot. That this service was not required by the contract, and that for this extra service the claimant was entitled to recover the sum of $657.58.

The contract contained a provision that for *additional* service a *pro rata* compensation should be allower. (*R.*, *p.* 4.)

The appellant directed the extra service to be performed.

The claimant performed it.

The right to recover the amount found by the Court is too plain to admit of argument.

II.

The contract on route 6635 is fully set out in the record. (R., pp. 5–9.)

The difference between the parties regarding this contract arises from the fact that the appellant claims that the claimant agreed in the contract to perform the additional service referred to without further compensation than that provided to be paid by the contract.

We submit that this is not the contract.

That the service to be performed is set forth in the contract in plain and unambiguous terms, so plainly and clearly that there is no necessity for interpretation or construction. It speaks for itself.

It will be borne in mind that this claim is for additional service performed outside of and beyond the limits of the city of New York.

The defendant claims that the Postmaster-General had the right under this contract to order the claimant to perform *any* new or additional service, whether in or out of the city of New York—to Jersey City, across the Hudson river, and, *a priori*, to Philadelphia, Baltimore, or to any place which, in his judgment, was required by the public interest.

We submit—

FIRST. That he had no right to order the claimant to perform any new or additional service *outside of the city of New York.*

This contract was for mail messenger service in New York city.

The heading to the notice of advertisement for proposals is in the words:

"*Mail messenger service in New York City.*"

The first clause in the advertisement is—

"*For carrying the mails between the post-office* in the city of New York *and the railroad stations and steamboat landings*," &c.

Leaving the plain inference that the mails were to be carried to no other railroad stations and steamboat landings than those in New York city.

The advertisement also required all bidders to superscribe their poposals:

"*Proposals for mail messenger service, New York, N. Y.*"

In his proposal the claimant states that he will—

"*Carry the mails on route* 6635 *between the post-office at New York city and the railroad and steamboat landings in* SAID CITY."

After the advertisement had been published, the proposal made by the claimant and accepted by the defendant, they met and executed the contract. This contract specifies that the claimant will carry the mails upon the routes specified, "and will do and perform all other mail messenger and transfer service *now being performed in the said city of New York*, and any *and all new or additional* mail messenger or transfer service in THE SAID CITY."

It is argued that for the reason that one of the specifications in the contract, designating the service to be performed, is for carrying the mail "from the New York city post-office to the Pennsylvania Railroad depot [Jersey City] that the Postmaster-General might require the claimant to perform any new or additional service *in or out* of the city of New York as he saw fit.

There might be ground for argument here if the contract were silent on this point; but it is not. It in express terms limits the *new* or *additional* service which may be required of the claimant "*to any and all new or additional mail messenger or transfer service in the said city.*"

SECOND. But the extra service performed by the claimant was not *new* or *additional* service.

The Court find that it was service which was being performed at the time of the execution of the contract by the Pennsylvania Railroad Company under their contract for mail messenger service on route No. 7004. (Finding IV.) The Postmaster-General may have reserved the right to

order the claimant to perform such new or additional service in the city of New York as the public interest might require; but we apprehend the defendant will fail to satisfy the Court that mail service which was then being performed by other parties and being paid for by the defendant was new or additional service; or that the public interest required that the claimant should be compelled to do what the railroad company had contracted to do and what the defendants were paying them for doing.

We submit that the defendant, having ordered the change in the service, and the change being of such a nature as to reasonably involve the claimant in additional expense, he is entitled to recover the money paid by him for ferriage and also for the extra service performed by him. And that the contract being silent upon the amount to be paid for the extra service, the measure of damage is the reasonable value of the service performed and interest on the amount paid by him from the time of payment.

Grant's Case, 5 Court of Claims, 72.
Cooper's Case, 8 Court of Claims, 199.
Ford v. *United States*, 17 Court of Claims, 60.

There was some contention on the trial in the Court below as to the reasonable value of the extra service, but the Court having found as fact that the *pro rata* value was the reasonable value we are bound by this finding.

III.

But if the Court should be of the opinion that this contract is uncertain and ambiguous, then we submit—

(1) That the same rule should govern in construing it that would apply if the contract were between individuals.

Gilbert's Case, 1 Court of Claims, 28.

Gilbert et al. v. *United States*, 8 Wall., 358.
Manufacturing Co. v. *United States*, 17 Wall., 592.

(2) The chief guide in construing the contract is the actual intention of *the parties*—the understanding which *they both had*—not the design of either *individually*.
Garrison v. *Bancraf*, 11 Vt., 490.
Parsons on Contracts, 7th ed., vol. 2, p. 631.

(3) The Court will consider the object which the parties had in view.
Springsteen et al. v. *Simpson et al.*, 32 N. Y., 706.
Lacy v. *Green*, 84 Pa. State, 514.
Aikins v. *U. S.*, 17 C't Claims, 260.

And will take into consideration all the surrounding facts and circumstances.
Dent v. *North Am. Steamship Co.*, 49 N. Y., 390.
Thomas v. *Wiggins*, 41 Ill., 470.
Karmuller v. *Krotz*, 18 Iowa, 352.
United States v. *Gibbons*, 109 U. S., 200.

(4) If any doubt exists, it should be construed strongly against the party who prepared it.
Noonan v. *Bradley*, 9 Wall., 394.
Garrison v. *The U. S.*, 7 *Wall.*, 688.

The language of this contract was prepared and furnished in print by the defendant; and if its expressions "in said city" and "new or additional service" are doubtful, they should be construed against the defendant. It is the business and duty of the Postmaster-General's Department to prepare mail contracts in precise and unequivocal terms; and if it is not done, innocent contractors should not be misled and made to lose large sums of money by

such neglect. And if the Government intended one thing and the appellant another, and the language of the contract is ambiguous, the claimant's construction should prevail.

If it can be done, however, as was said in Aikins' case, (17 C't Claims, 260,) "a cont act ambiguous in its terms will be construed in accordance with the business interests of both parties." To do this in this case, the Court will hold that the contract for route No. 6635 does not cover this service. To hold otherwise would inflict a great loss upon the appellant, while to so hold will give him simple justice, and take not a cent from the defendant which was not deducted from the compensation of the Pennsylvania Railroad Company, or might have been deducted. The documentary evidence shows that the Government made such deduction when the service performed by that company on route No. 7004 was reduced in other instances.

In Gibbon's case, already referred to, it is also said:

"In construing a disputed clause of a contract three things should be considered: (1) The circumstances in the light of which the contract was made. (2) The general purpose of the contract and of other provisions directly or indirectly affecting the clause under consideration. (3) The language and effect of the clause itself."

It seems to us that this case is far stronger than Robert's case, (92 U. S., 41.) There it was held that where a contract is for the carrying of mails by an indirect route from New York to Chicago, touching at various places, it does not preclude a claim for additional service in carrying a part of the same mail matter by another, the direct route. It is true that in that case it was contended that Congress recognized the claim by referring it to this Court; but it

was held that he was entitled to recover apart from that as well. Justice Bradley says:

"Even if it was intended to refer the whole subject—the right to compensation as well as the amount—in our judgment the claimant, under the circumstances of the case, was entitled to compensation."

The opinion of the Court below fully covers the case, and is given in full in the record.

R., pp. 9-13.

We submit that the judgment of the Court below should be affirmed.

J. COLEMAN,
Att'y for Appellee.